

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-050103

11/03/2011

HONORABLE LINDA H. MILES

CLERK OF THE COURT
L. Crawford
Deputy

CHAD GAMMAGE

LISA M AUBUCHON

v.

THOMSON CONANT P L C, et al.

ROBERT R BERK

JURY TRIAL SET
PRETRIAL MANAGEMENT CONFERENCE SET

Courtroom 106 - NE

11:00 a.m. This is the time set for telephonic Status Conference. Plaintiff Chad Gammage is represented telephonically by counsel, Lisa M. Aubuchon. Defendants Thomson Conant, P.L.C., Neil Thomson and Paul Conant are represented telephonically by counsel, Robert R. Berk.

A recording of this proceeding is being made by audio and/or videotape in lieu of a court reporter.

In preparation for the conference, the Court reviewed the parties' Joint Status Report, filed October 28, 2011. The Court has also received and reviewed Defendants' Motion to Strike Plaintiff's Expert Witness filed on September 16, 2011; the Response thereto filed on September 29, 2011, and the Reply filed on October 11, 2011.

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IT IS ORDERED denying Defendants' request for Oral Argument on their Motion to Strike Plaintiff's Expert Witness for the reason that argument is not necessary to a determination of the issues.

Based on the matters presented,

IT IS FURTHER ORDERED granting Defendants' Motion to Strike Plaintiff's Expert Witness, in part, and striking the liability/standard of care rebuttal opinions of Thomas Inserra for the reason that Plaintiff is entitled to only one expert on the issue of liability/standard of care and that expert is John Blischak. Notwithstanding the Plaintiff's untimely disclosed damages opinions of Mr. Inserra, Plaintiff shall be entitled to call Mr. Inserra to testify at trial on the issue of damages. To the extent that the Defendants seek to strike Mr. Inserra's opinions regarding damages, the Motion is denied.

IT IS FURTHER ORDERED that Defendants shall have until **December 5, 2011** to have their expert, Mark McCain, supplement his report to respond to Mr. Inserra's damages opinions.

The Court has also received Defendants' Motion to Continue Discovery Deadline, filed October 26, 2011. Although the response time has not run, Ms. Aubuchon advises the Court that she is prepared to address Defendants' Motion to Continue Discovery Deadline today. Discussion is held regarding this Motion.

Defendants' counsel advises the Court that he will not be filing a Motion to Compel with regard to some outstanding discovery responses.

Counsel will discuss further the issue concerning documents that Defendants claim are privileged.

Counsel are reminded that should any discovery disputes arise, any party seeking a discovery order shall, prior to filing discovery motions, meet and confer pursuant to ARCP, Rule 37(a)(2)(C). Counsel are advised that, as the Court interprets Rule 37(a)(2)(C), an exchange of correspondence between counsel is **not** sufficient to satisfy the "personal consultation" requirement of the Rule, except in extraordinary circumstances. At a minimum, counsel must speak to each other by telephone to attempt to resolve the dispute in good faith before involving the Court. Counsel are further advised that after the personal consultation referenced above, the Court is available to discuss, by joint telephone call, discovery disputes or any other matter that may impact the parties' ability to resolve this case in a just, speedy and inexpensive manner. See Rule 1, ARCP.

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There being no objection,

IT IS ORDERED granting Defendants' Motion to Continue Discovery Deadline and extending the discovery deadline to **December 15, 2011** to allow the parties to depose each other's experts.

Defendants' counsel requests that the deadline for the filing of all dispositive motions be extended to January 31, 2012. Discussion is held regarding this request.

IT IS ORDERED granting Defendants' counsel's request and extending the deadline for the filing of all dispositive motions to **January 31, 2012**.

Discussion commences regarding the scheduling of trial in this case.

Counsel agree that four days will be needed for trial. Counsel are provided the opportunity to have a firm trial date but choose to have the trial set in conjunction with another case in order to have an earlier trial date. The Court advises counsel that if trial is set in conjunction with another case and that case does not settle, the trial in this case will be placed in case transfer.

IT IS ORDERED:

1. TRIAL

This matter is set for a Jury Trial on **May 14, 2012 at 9:30 a.m.** in this Division.

LENGTH OF TRIAL: **4** days

THE HONORABLE LINDA H. MILES
MARICOPA COUNTY SUPERIOR COURT
NORTHEAST REGIONAL COURT CENTER
18380 N. 40th STREET
COURTROOM 106
PHOENIX, AZ 85032

THIS IS A FIRM TRIAL SETTING

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Trial days and hours are as follows: Monday through Thursday from 9:30 a.m. to 4:30 p.m. The Court will take two 15-minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

2. MOTIONS IN LIMINE

Any and all motions *in limine* shall be filed no later than **March 19, 2012**, and shall be hand-delivered to opposing counsel. Such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972) (“The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial”). *See also*, Ariz. R. Evid. Rule 103(c). Written responses to motions *in limine* shall be filed no later than **March 28, 2012** and hand-delivered to opposing counsel. Replies shall not be allowed absent leave of Court. **Prior to filing a motion *in limine*, the parties must meet and confer in accordance with Ariz.R.Civ.P. Rule 7.2(a) to attempt to resolve issues to be raised by such motion, and any motion *in limine* must include a certification that they have done so.** Failure to meet and confer prior to the filing of a motion *in limine* may result in sanctions.

Unless prior written leave of Court is obtained for good cause shown, no party may file more than three (3) motions *in limine*, including all subparts. The parties shall not file motions denominated as “*in limine*” that are, in substance, late-filed motions for summary judgment.

The Court will rule on motions *in limine* without oral argument unless otherwise ordered. Any motion *in limine* not timely filed will be deemed waived.

3. JURY SELECTION

The Court uses the “struck” method for jury selection. The parties will be permitted to conduct their own *voir dire* after the Court completes its *voir dire*. The purpose of *voir dire* is to secure a fair and impartial jury and not to educate the jury as to the legal/factual theories espoused by a particular party.

4. PRETRIAL MANAGEMENT CONFERENCE

A Pretrial Management Conference is set for **April 27, 2012 at 11:00 a.m.** (time allotted: one hour), in this Division. The lead trial counsel for each party is required to attend the Pretrial Management Conference. Self-represented litigants are also required to attend. Except as stated above, parties are not required to

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attend. Failure of any trial counsel or any self-represented litigant to attend the Pretrial Management Conference may result in sanctions.

At the Pretrial Management Conference, counsel for each party and any self-represented litigants shall be prepared to discuss:

- A. Length of *voir dire*, opening statements, examination of witnesses, and closing arguments.
- B. The number of jurors on the jury panel, and the involvement of alternate jurors in deliberation.
- C. Stipulations and objections regarding witnesses and exhibits.
- D. Preliminary and final jury instructions, juror notebooks and verdict forms.
- E. Agreed-upon deposition summaries and excerpts from deposition transcripts and/or videotaped depositions.
- F. Any special witness scheduling, interpreter or equipment-related issues.
- G. A brief summary of the case to be read to the jury.
- H. The allocation of trial time per party.
- I. Status of settlement efforts.

5. MARKING EXHIBITS FOR TRIAL

Trial counsel and self-represented litigants (“the parties”) are directed to personally meet **no later than March 15, 2012** to exchange trial exhibits and discuss the exhibits prior to submitting them to the Court for trial. At this meeting, the parties’ shall attempt to agree on authenticity, foundation, and admission of the exhibits to shorten the time spent on exhibits during the trial.

At the time of the Pretrial Management Conference, the parties shall present to the Clerk of this Division all exhibits they will be introducing at trial. Counsel shall present all exhibits with a written list of brief exhibit descriptions to the Clerk. Each exhibit shall be clipped or bound if too large to be stapled. Exhibits are to be separated by a colored sheet of paper or by a divider sheet. If counsel are

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submitting large charts, blow-ups or maps, an 8-1/2 x 11 size copy of same shall be included, which can be marked as the exhibit, and can go into the jury if in evidence. The blow-ups, charts and/or maps can be used for demonstrative purposes but will not be marked as exhibits and will be returned to counsel. The exhibits will be marked by the Clerk in consecutive order: Plaintiff's exhibits will be marked first; Defendant's exhibits will be marked second. Exhibits are assigned numbers in a serial fashion. Placeholders will not be accepted and exhibit numbers will not be reserved for exhibits not presented at this time. **The parties shall ensure that there are no duplicate exhibits.** Failure to follow the procedure for submitting trial exhibits may result in the exclusion of that party's exhibits at trial.

NOTE: Counsel are advised that if they intend to use laptop computers and/or the Court's document camera during trial, they should make an appointment to meet with FTR personnel (602-372-7876) at least one week in advance of trial to ensure compatibility of their equipment and obtain answers to technical questions.

6. WITNESS INFORMATION FORM

Counsel for each party and any self-represented litigant shall meet **no later than April 18, 2012** to complete the Witness Information Form attached to this minute entry. The parties shall set forth the name of each witness and the estimated time required for direct and cross-examination. Time estimates also shall be set forth for opening statements and closing arguments. The completed form shall be submitted with the Joint Pretrial Statement. The Court will rely upon the Witness Information Form to predict the length of the trial for the jurors and to allocate the time allowed for each party to present its case to the jury.

Attachment: Witness Information Form.

7. FINAL JOINT PRETRIAL STATEMENT

The Joint Pretrial Statement meeting the requirements of Ariz.R.Civ.P. Rule 16(d) shall be delivered to this Division by 5:00 p.m. on **April 20, 2012**. The following shall be filed with the Joint Pretrial Statement and copies provided to this Division:

- A. A statement by each party identifying all expert witnesses, the opinions of

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said experts, and a description of the factual/substantive basis for each such opinion.

- B. A stipulated brief summary of the case, which the Court can read at the outset of *voir dire*.
- C. A list of all exhibits containing a brief description of each exhibit, as well as the objections, if any, to such exhibits and the reasons for such objection. **Any objections not so included are waived.**
- D. A CD containing the full text of all preliminary and final jury instructions jointly agreed upon by the parties in Word format.
- E. CDs containing separate sets of requested instructions that have not been agreed upon in Word format. (Please consider *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the RAJI Civil 4th Statement of Purpose and Approach before preparing any request for non-RAJI instructions.). Non-RAJI instructions should be numbered consecutively, one per page, with a heading (*e.g.*, Plaintiff's Instruction No. 1, etc.) and authority for the instruction.
- F. Written objections to any jury instructions citing specific authority in support of said objections.
- G. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced pursuant to Rule 32(a) with testimony to be offered by an opponent. The Court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. **Any objection not so included is waived.** Since jurors generally prefer narrative summaries, with brief excerpts of questions and answers, to reading many pages of testimony, the parties shall confer as to whether agreed upon summaries can be prepared.
- H. A completed Witness Information Form.
- I. Any voir dire questions a party seeks to ask during jury selection.

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- J. Trial memoranda (optional).
- K. Proposed juror notebooks. The Court encourages the use of juror notebooks in appropriate cases. The contents of such notebooks must be in evidence by stipulation or, for exhibits, by court ruling. Any exhibits used shall correspond to the numbered exhibits marked by the clerk. A copy of any juror notebook shall be provided to the Court at the Pretrial Management Conference.

One day's jury fees will be assessed unless the Court is notified of settlement by 2:00 p.m. on the judicial day before trial.

NOTE: All Court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by contacting the Division (602-506-6452) three (3) court days before the scheduled proceeding.

11:14 a.m. Matter concludes.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT REDIRECT	AND CROSS
1			
2			
3			
4			
5			
6			

DIRECT, REDIRECT & CROSS TOTAL: _____

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT REDIRECT	AND CROSS
1			
2			
3			
4			
5			
6			

DIRECT, REDIRECT & CROSS TOTAL: _____

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TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	